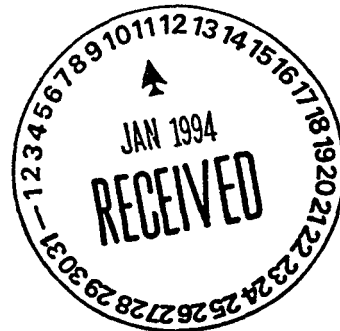


FMT

INTEROFFICE CORRESPONDENCE

DATE January 7, 1994

TO: H. R. Mann, General Manager, Bldg 111, X4361

FROM: *P W Swenson*
P W Swenson, Program Integration, T130D, X7211

SUBJECT STATUS OF INTERAGENCY AGREEMENT (IAG) REEVALUATION - PWS-005-94

Following our meeting with you on Monday, January 3, 1994, the EG&G Rocky Flats IAG team met on Wednesday, January 5, 1994. The team developed a preliminary list of the attributes of the revised IAG that we felt were essential if we were to gain anything at all from this renegotiation process. These principles are:

- Work scope must be based on funding constraints and risks,
- Work sequence must be based on a logical flow of phases and tasks,
- Schedules must be based on best available data with the ability to be changed if new data dictates change is needed;
- The IAG should encourage the regulators to speak with one voice,
- The IAG should recognize the authority and requirements of the National Environmental Protection Act (NEPA),
- The IAG should incorporate a reasonable change control process,
- The IAG milestones should be based on a two year running window

Additional attributes of the agreement will be developed as the team continues to meet. Attachment 1 is the current IAG Reevaluation team roster. It is our goal to develop a work package to support this effort and present it to the Change Control Board within the next two weeks.

On January 6, 1994, the Department of Energy (DOE), Environmental Protection Agency (EPA), and the Colorado Department of Health (CDH) met for the first "negotiation" session. EG&G Rocky Flats attended as observers. Also attending were two representatives of the Citizen's Advisory Board (CAB). Attachment 2 includes detailed minutes of the meeting and also a list of the attendees. The purpose of the meeting was to begin the process of hammering out the principles that would govern the IAG reevaluation. I would like to make the following points up front:

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At the beginning of this meeting, a set of ground rules for conducting this and future negotiating meetings were discussed and agreed to. One of these was clarification of the role of each of the attendees. In this discussion, we expressed our understanding that our role, for the time being, was in support of DOE and that we were not a "voting" member. This role was further clarified by J. Wienand, of DOE, Rocky Flats Office (RFO) who said that we would only express our voice through DOE. It was decided that the CAB was also not a voting member, but would be allowed to comment and input on any and all of the discussions since they were the recognized pathway to and from the public at large.

D. Miller representing the Colorado Attorney General expressed some concern that the CAB pathway alone might be too limited and wondered if there were other ways to ensure broad public input. This was not specifically resolved and it seemed to be accepted that the CAB could function for all the public if it did not seek to censor any opinions in developing its positions.

Nine principles were agreed to with little discussion by the three parties. Twenty additional principles had been developed by one or more party in the preparations for this meeting, but could not be agreed to and will be discussed in meetings next week. Among these remaining issues are, the status of EG&G Rocky Flats as a party, the scope of coverage of the revised IAG, and the status of the existing IAG and the accumulated penalties.

Driving the resolution of the remaining twenty principles is a meeting between Messrs Silverman, Looby (CDH) and the EPA Regional Administrator on January 18, 1994, to discuss the principles. Their respective staffs will obviously feel the heat to develop a consensus set of principles that the three managers can "sign".

If signed, ostensibly that would initiate the renegotiations. One of the already agreed to principles is that the parties would take on a goal to complete the negotiations in four months. The CAB representatives wondered how this could be accomplished.

The discussion of principle #15 added further uncertainty to the ability to meet the schedule. This principle was generated by EPA and CDH. It is EPA's contention that one of the major root causes of the current situation of missed milestones is the fact that DOE procedures and requirements make it nearly impossible to set and stick to a reasonable schedule. Therefore the principle states that DOE must complete its review of procedures and requirements and delete those that impede cleanup progress before there could be any meaningful negotiation on milestones. DOE felt that such a review could take place while the negotiations were on-going and agreed that setting schedules would have to wait until the requirements were reviewed and fixed. CDH, whose position is that the IAG is basically a milestone document, wondered what we could negotiate on if the milestone negotiation would be postponed until completion of the DOE review.

H P Mann
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Attachment 3 is a list of the current consolidated IAG principles and remaining issues compiled by DOE. We have distributed this to all Assistant General Managers via their strategic planning representatives.

We have asked that each organization review the principles and let us know if the principle is impossible to live with, the principle is a "must have", and in this case, what issues we might be able to give ground on in order to win our 'must haves'."

Finally, an additional and parallel action on environmental compliance has been initiated. During a discussion with EPA on our response to the Comprehensive Environmental Remediation, Compensation, and Liability Act (CERCLA) 104 (e) information request, it was apparent that one of the issues that bothers EPA about Rocky Flats is that they suspect we are conducting Environmental Restoration Management (ERM) activities at the plant inside the Industrial Area that are subject to CERCLA and that they are unable to carry out their regulatory responsibility for assuring compliance. Since our consistent reaction to the EPA when they mention CERCLA is to refer them to ERM, unknowingly, we confirm their feeling. We will be working to develop a better understanding of how CERCLA applies to the full range of plant activities, and based on this understanding maybe a proposal to initiate a CERCLA compliance program much along the lines of our Resource Conservation and Recovery Act compliance program. The program would involve training appropriate managers, supervisors, and workers on CERCLA requirements and methods for documenting our reviews and analyses of work to ensure that releases are obviated or their consequences abated.

If you have any questions on this matter, I will be happy to provide additional detail.

ahb

Attachment
As Stated

cc:
W. S. Busby ✓
R. D. Copp
T. DeMass
R. E. Fiehweg
M. J. Freehling
E. M. Lee
L. S. Morissette
T. A. Smith
D. A. Ward

IAG RE-EVALUATION TEAM

Attachment 1
PWS-005-94
Page 1 of 1

EG&G, Rocky Flats, Inc. Team Members

Peter W Swenson
Transition Management - Program Integration
T130D
X7211, D5620, Fax 6375

Edward M Lee Jr
Environmental Restoration
Bldg 080
X8648, D1762, Fax 8538

Michael J Freehling
RCRA
T130C
X8202, D5065, Fax 5001

Robert E Fiehweg
Environmental Protection
T893A
X7403, D3132, Fax 3534

David A Ward
Legal
Bldg 111
X5938, D1083, Fax 2156

Terry A Smith
Community Relations
T130F
X2986, D3108, Fax 6153

Laurie S. Morissette
EG&G, Inc
Washington Analytical Service Center
8890 Sudley Rd
Manassas, VA 22110-4788
703-330-4329
703-330-4050 Fax

Eric H Johnson
Transition Management - Program Integration
T130D
X6378, Fax 6375

Tye DeMass
Environmental Restoration
080
X8760, D7466, Fax 8556

Wanda S Busby
Environmental Restoration
080
X8522, D5129, Fax 8556

Angelique H Brewster
Transition Management - Program Integration -
Admin Support
T130D
X6459, D5622, Fax 6375

DOE, RFO Team Members

Leanne W Smith
Office of Planning and Integration (OPI)
115
X3678, D7232, Fax 6054

David A. Brockman
Environmental Safety & Health
115
X4504, D0953, Fax 8086

Richard Schassburger
Environmental Restoration
117A
X4888, D5026, Fax 4871

Joe Wienand
Operations & Waste Management
T124A
X5926, D1575, Fax 8086

Virginia Bristol
ENI
T112C
X8085, Fax 8086

Mell J Roy
Environmental Counsel
116
X7843, D7832, Fax 3717

Ray I. Greenberg
Environmental Restoration Headquarters
112C
X8088, Fax 8086
301-903-8190, Fax 301-903-8138
Sky Pager 1-800-759-7243 ID#573-8800

If you have any questions/comments, please call Angelique Brewster at extension 6459

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**Summary Record of the January 6, 1994
Meeting Between DOE, EPA and CDH**

On January 6, 1994, the first (IAG) Reevaluation meeting was held at the Environmental Protection Agency (EPA) regional headquarters. The list of attendees is attached.

The purpose of the meeting was to discuss a list of consolidated IAG principles that had been compiled by the Department of Energy (DOE) based on an earlier telephone conversation among the parties. This telephone call followed the exchange of proposed principles by the parties. There were four points on the agenda. First, the ground rules by which the attendees would operate would be decided. Second, the roles of the participating organizations would be fixed. Third, the consolidated principles would be discussed, and finally, the remaining issues would be discussed.

Ground Rules

It was decided that the group would make decisions on a consensus basis with each of the voting members indicating agreement, disagreement, or neutral positions. Only the signatory parties (i.e. DOE, EPA, and Colorado Department of Health (CDH)) would vote on positions. Further, it was decided that the discussions would not be held confidential to the negotiating group and that each participant represented his agency. These latter two issues distinguish these negotiations from the conduct of QAT meetings which involve many of the same participants.

Roles

The role of each signatory was clear and needed no further discussion. On the role of EG&G Rocky Flats, Pete Swenson indicated that for the present time, their role was in support of DOE, that they would not have a formal vote. Further, Joe Wienand, DOE, indicated that EG&G Rocky Flats would have voice only through DOE. On the role of the Colorado Advisory Board (CAB), it was decided that they would not have a vote but would be free to offer an opinion and input on any issue under discussion. It was decided that they were the public liaison for the renegotiation. Dan Miller, Colorado Attorney General office, expressed some concern that using only the CAB might cause the loss of needed public input, in that we might only hear of the arrived at CAB position. It was decided that CAB could provide the needed public input by assuring that all opinions were brought forward.

Discussion of Commonly Agreed to Principles

This part of the discussion was based on the January 6, 1994 draft "Consolidated IAG Principles" that was prepared by DOE.

- # 1 - agreed to by all parties.
- # 2 - agreed to with the understanding that the prioritization of risks that are referred to would be only conducted among the activities covered by the agreement and would not be prioritized with complex-wide or other site activities that were outside of the agreement. This was a CDH issue.

- # 3 - EPA disagreed with this principle since it was inconsistent with proposed EPA 1 b
This was changed to an issue
- # 4 - EPA disagreed with this principle since it was inconsistent with proposed EPA 1 b
This was changed to an issue
- # 5 - agreed to by all parties
- # 6 - agreed to by all parties
- # 7 - agreed to by all parties
- # 8 - EPA disagreed with this principle They stated that there was an adequate change
mechanism in the current agreement Further, they felt sentence three of the
proposed principle needed clarification as to how the budget process would work to
support implementation of the agreed to milestones
- # 9 - agreed to by all parties
- # 10 - agreed to with the understanding that EPA and CDH would be kept informed of the items
that were being considered for change and that they could then pick those that they
wanted to be involved in The wording of the proposed principle was modified to
capture this idea.
- # 11 - had been previously moved to the issues category
- # 12 - agreed to by all parties
- # 13 - originally read "Recognition that the Rocky Flats Plant is a superfund site and the
degree and extent of application of the Comprehensive Environmental Remediation,
Compensation, and Liability Act (CERCLA) process to specific buildings, structures
and equipment will be subject to negotiations." Based on a contention by the CDH that
this should not be a principle, it was removed from the proposed consolidated list EPA
stated that it should not be removed. It will be treated as an issue
- # 14 - had been previously moved to the issues category
- # 15 - had been previously moved to the issues category CDH indicated that they felt a date
certain for completing the review was needed. DOE felt that dates were the things that
would be negotiated and should not be put into principles. Both CDH and EPA expressed
a concern that the DOE process for reviewing and streamlining its requirements and
procedures, must be completed prior to negotiation of milestones and schedules {Note -
there was an initial contention by CDH that the review had to be complete before
negotiations began, whereas the "prior to completion" language was used by EPA }

- # 1 6 - agreed to by all parties (some expressed healthy skepticism)
- # 1 7 - CDH also wanted to require a firm deadline for the development and permitting of an interim waste storage facility EPA said that the previous language was OK by it
- # 1 8 - this principle still remains an issue The language in the principle seemed to confuse all parties The National Conversion Pilot Program for example, could allow receiving waste from other sites This program could be considered economic and not technology development

Discussion of Issues

#15 - Extensive discussion of this item occurred The key element in contention is that CDH wants a deadline As noted above, the discussion revealed that both CDH and EPA want the DOE to review its procedures and requirements and eliminate those that impede cleanup It is the contention of EPA that this is one of the root causes for the current IAG noncompliance situation By the end of the discussion, the position had become that renegotiation of milestones or schedules could not take place until DOE had conducted its review

DOE indicated that it would require research to determine what the review process would take and how long it would take They were asked to provide a date by which they would know this Joe Wienand agreed only to provide a status of the DOE research into this matter at the next meeting DOE and EG&G Rocky Flats then caucused and produced alternative language that they hoped could assuage the concerns of the other parties The basic principles were an agreement to delay milestone negotiation until the review was completed and close involvement of the regulators in hopes that they would gain an appreciation of the problem facing DOE in this regard

The alternative language was presented by DOE and discussed Changes were offered by the other parties and the final draft language reads as follows.

"The agencies agree that prior to negotiating revised schedules and milestones, procedures and regulations applicable to the activities covered by the agreement will be reviewed by DOE with the ultimate goal of achieving consensus among the parties regarding the elimination of those that add no value or delay the cleanup process. This review process will be conducted with the participation of regulatory authorities and stakeholders."

With the inclusion of the additional language, DOE and CDH felt that more time was needed to study this and the issue was tabled.

#17 - CDH feels that DOE is only giving lip service to expanding interim waste storage and therefore a firm deadline is required. EPA suggested that the establishment of a milestone during negotiations that would specify the availability of interim waste storage would be sufficient

EPA suggested the following language be added to the beginning of the existing wording

"During negotiations, milestones will be established committing DOE to ."

Parties agreed to study this language and take up the matter at the next meeting

Other Matters

- 1 CDH expressed the opinion that if it was generally agreed that we would not negotiate milestones and schedules until DOE had finished its requirement review, then it did not appear that there was much to negotiate. It was requested that each party bring, to the next meeting, a list of those things that could be negotiated other than milestones and schedules.
- 2 An urgency to complete the negotiations on the principles was expressed since there would be a meeting of Messrs Silverman, Looby and McGraw on the January 18, 1994 to agree to these principles. Therefore two meetings were scheduled for next week on Wednesday, January 12, 1994, 8 00 a m to 11 30 a m , EPA regional counsel room, 7th Floor, and on Thursday, January 13, 1994, 8 00 a m to 11 30 a m at CDH

Actions

- 1 DOE provide status of research on the review of procedures and requirements
- 2 Provide a list of what IAG elements, other than milestones and schedules, could be negotiated in the interim
- 3 DOE agreed to reconsolidate this list and fax it to all parties by close of business January 7, 1994.

List of Attendees

Environmental Protection Agency

Peter Ornstein - Office of the Region Counsel
Lou Johnson
Martin Hestmark

Colorado Department Health

Gary Baughman
Joan Sowinski
Dan Miller - with the Colorado Attorney General's Office
Joe Schieffelin

Department Of Energy

Leanne Smith
Raymond Greenburg
Anne Taylor (Booz Allen - supporting R G)
Joe Wienand
Mel Roy
Rich Schassburger

Colorado Advisory Board

Ginger Swartz
Carol O'Dowd

EG&G, Rocky Flats, Inc.

Peter Swenson
David Ward
Eric Johnson
Wanda Busby
Ned Hutchins

Sharon Kercher of the EPA acted as a facilitator.

DRAFT
CONSOLIDATED IAG PRINCIPLES

1. Negotiations will work toward an IAG that considers the current mission of Rocky Flats, which is "Manage Waste and Materials, clean up and convert the Rocky Flats site to beneficial use in a manner that is safe environmentally and socially responsible, physically secure, and cost-effective" (CDH change incorporated agreed).
2. Within the scope of the agreement, control of higher risks will be given priority, emphasizing and ensuring public and worker health and safety, and environmental protection. (CDH change incorporated agreed)
3. The IAG will remain essentially a remediation document. Additions to the IAG shall be limited to certain D&D and ER waste management activities, the scope of which shall be subject to negotiations. (CDH change incorporated, DOE modification EPA wants as an issue)
4. DOE must demonstrate a firm commitment to accomplish the effort agreed upon within the agreement. This commitment must result in specific management improvements, firm financial commitments for IAG implementation in future years, and penalties for non-compliance. (CDH change incorporated, DOE modification EPA wants as an issue)
5. The three principals (EPA regional administrator, Assistant Director for the Office of Environment at Colorado Department of Health and RF Manager) enter IAG negotiations with the same level of authority that binds their respective agencies. (CDH ok agreed)
6. The public will be involved in identifying areas within the present agreement in need of improvement and goals to be set for a revised cleanup approach at Rocky Flats. Increased stakeholder involvement in the work scope development, prioritization, schedule and budget process is required to develop an understanding of the public's desires. The Citizens Advisory Board should be utilized to coordinate stakeholder involvement. (CDH ok agreed with even CAB reps)
7. Planning assumptions must be agreed upon by all parties. Comprehensive work scope, schedule, and cost estimates will be the basis for schedule discussions and milestone establishment in the IAG. Regulators will be meaningfully involved in the development of the scope, schedules, and costs associated with IAG implementation. (CDH change incorporated, DOE modification may combine with principle 8.)
8. The agreement should allow flexibility to accomplish efficient cleanup at Rocky Flats. It must also remain effective enforcement vehicle. Negotiations should pursue some type of milestone schedule that allows for periodic review of the milestones while retaining some milestone schedule framework. The agreement also needs to include a mechanism to account for changing circumstances. (CDH change incorporated EPA wants as an issue)
9. The issues identified by the Quality Action Team (QAT) must have action plans and schedules for resolution prior to negotiations. All parties recognize that early efforts on these issues will facilitate effective and efficient negotiations. (CDH change incorporated agreed)

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10. The agreement should accommodate regulator involvement in formal controls including formal baseline change control processes. (CDH ok agreed)
11. Moved to issues
12. A revised agreement should define an improved and accelerated cleanup program at Rocky Flats. New streamlined processes should be used wherever possible. (CDH change incorporated agreed)
13. Deleted per CDH, EPA wants as an issue.
14. Moved to issues.
15. Moved to issues.
16. The goal for the IAG negotiations is not to exceed 4 months. (CDH ok, agreed)
17. Moved to issues.
18. Storage of off-site wastes from other DOE facilities is not planned at the Rocky Flats Plant, except as specifically provided by orders or agreements pursuant to FFC Act requirements. The use of limited quantities of wastes from other sites for technology development will be subject to regulatory approval. (DOE modification to CDH changes, will move to issue but close to agreement)

ISSUES

- a. EG&G must be held more accountable to all parties for implementing the revised agreement.
- b. Existing IAG will remain in effect, including all procedural and penalty components, until specifically superseded by a revised and executed final IAG. During the negotiation period, EPA/CDH may continue to assess stipulated penalties within terms of the present agreement, and DOE may dispute such assessment, pursuant to the IAG.
- c. DOE must pay significant penalty for violations of existing IAG.
- d. Prior to signing a new agreement, DOE will pay a significant monetary penalty for current violations and unavoidable future violations of the existing agreement.
- e. Interim relief for DOE on milestone schedules and other compliance issues related to the IAG must be accompanied by DOE schedule commitments on short and long-term issues such as: full compliance with RCRA/CHWA, cleanup, removal of stored waste from RFP, decommissioning completion, etc. DOE must affirm the Administration's commitment to requesting full funding for the IAG requirements after the interim relief period (2-3 years).
- f. It is essential for the State of Colorado to maintain its oversight capacity at the Rocky Flats Plant. To do this, the Agreement in Principle (AIP) must be extended for at least five years at current levels of funding (\$3,700,000) plus inflation.
- g. ~~DOE Change to:~~ DOE must continue to conduct necessary inspections of all radioactive, hazardous, and mixed wastes stored at Rocky Flats Plant to assure safety and proper management. Any issues regarding the proper management of mixed residues will be addressed in accordance with the appropriate provisions of the Residue Agreements.

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h. (15) Per Executive Order, DOE will review its procedures and regulations to reduce and eliminate those that are superfluous. DOE-RFO will embark on an internal review of its procedures with the ultimate goal of reducing its internal overhead and reducing its cost. The integration of DOE's procedural requirements into the cleanup process and EPA/CDH's role in DOE's internal review of its internal procedures will be subject to negotiations. CDH- Add new final sentence "DOE will conduct this internal review by Sept. 1, 1994. Rewritten as follows, close to agreement this: The agencies agree that prior to negotiation of revised schedules and milestones, procedures and regulations applicable to the activities covered by the agreement will be reviewed by DOE with the ultimate goal of achieving consensus among the parties regarding the elimination of those that add no value or delay the clean-up process. This review process will be conducted with participation of regulatory agencies and stakeholders.

i. (17) During negotiations, milestones will be established committing DOE to significantly expanding permitted interim waste storage. This would include storage for existing wastes and for new wastes, particularly environmental restoration (ER) and decontamination and decommissioning (D&D) wastes. The regulators will assist DOE by facilitating and expediting the permitting process. CDH - Change first sentence to include a deadline.

j. (14) Any issues that have the potential to impede the cleanup of the plant will be subject to negotiations. CDH- Needs clarification to accept this principle.

k. CDH would also like to add an additional principle for consideration that would read "DOE must develop definitions, policies, and/or plans for D&D, transition, economic development, and waste management. All of these potentially impact successful implementation of the IAG, and a common understanding within and between parties is essential prior to negotiations."

l. (11) Future site use and cleanup are closely intertwined. Cleanup must be consistent with the projected future use of the site and vice versa. A future site use determination process that avoids the implementation of unsubstantiated or conservative risk criteria, and unrealistic cleanup goals, should be included in the amended agreement.

m. (13) Recognition that the Rocky Flats Plant is an NPL site and the degree and extent of application of the CERCLA process to specific buildings, structures and equipment will be subject to negotiations. (CDH said delete this as it was captured in #3 principle, DOE can agree with this one but extent to which CERCLA applies to buildings, etc. needs to be defined - HQ action).

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